

<p>IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH CENTRAL DIVISION</p>	<p><b>FILED</b> CLERK, U.S. DISTRICT COURT November 4, 2004 (8:57am) DISTRICT OF UTAH</p>
<p>DIRECTV, INC., a California corporation, Plaintiff,</p> <p>vs.</p> <p>KATIE STONE, Defendant.</p>	<p>MEMORANDUM ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT</p> <p>Case No. 2:03-CV-1024 TS</p>

This matter is before the court on Defendant's Motion for Summary Judgment. Plaintiff's Complaint alleges that Defendant used specialized pirating equipment (pirate access devices) purchased from an Indiana dealer to violate 47 U.S.C. § 605 (unauthorized reception of satellite signals); 18 U.S.C. § 2511(1)(a)(unauthorized interception of electronic communications); and 18 U.S.C. § 2512(1)(b)(possession of pirate access devices).

Defendant moves for summary judgment on the grounds that Plaintiff has failed to show grounds for civil liability under those statutes because it has failed to show that Defendant was the actual purchaser, that she ever possessed the device, that she ever used the device, that she had the electronic system capability to use the device, or that she ever had the intent to purchase, possess or use the device. Defendant supports her Motion

with her Affidavit stating that she allowed a friend to use her credit card, that she never purchased, possessed or used the device in question and that she was, in fact, a subscriber of cable television during the time in question. Plaintiff has failed to file an opposition to the Motion.

Under Fed. R. Civ. P. 56, summary judgment is appropriate if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. If the movant bears the burden of showing the absence of a genuine issue of material fact, the non-movant may not rest on its pleadings, but must set forth specific facts showing a genuine issue for trial as to those dispositive matters for which it carries the burden of proof. *Mesa Oil, Inc. v. Ins. Co. of N. Am.*, 123 F.3d 1333, 1337 (10th Cir. 1997).

[A] party's failure to file a response to a summary judgment motion is not, by itself, a sufficient basis on which to enter judgment against the party. The district court must make the additional determination that judgment for the moving party is "appropriate" under Rule 56. Summary judgment is appropriate only if the moving party demonstrates that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. By failing to file a response within the time specified by the local rule, the nonmoving party waives the right to respond or to controvert the facts asserted in the summary judgment motion. The court should accept as true all material facts asserted and properly supported in the summary judgment motion. But only if those facts entitle the moving party to judgment as a matter of law should the court grant summary judgment.

*Reed v. Bennett*, 312 F.3d 1190, 1195 (10<sup>th</sup> Cir. 2002).

Thus, the court accepts as true all of the material facts as asserted in Defendant's Affidavit. The court determines that judgment for Defendant is appropriate under Rule 56 because Defendant has shown that there are no material issues of fact and, on the

undisputed facts, she is entitled to judgment as a matter of law. Because Defendant has shown it is undisputed that, with regard to the device, she was not the actual purchaser, never possessed it, never used it, never had the electronic system capability to use the device, and that she never had the intent to purchase, possess or use the device, she has shown that Plaintiff has failed to show that it can meet its burden at trial on any of its claims. Accordingly, Defendant is entitled to summary judgment as a matter of law. It is therefore

ORDERED that Defendant's Motion for Summary Judgment is GRANTED. It is further

ORDERED that judgment shall enter in favor of Defendant Katie Stone and against Plaintiff DIRECTV on all claims and this case be closed.

DATED this 4th day of November, 2004.

BY THE COURT:

  
TED STEWART  
United States District Judge

alt

United States District Court  
for the  
District of Utah  
November 4, 2004

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:03-cv-01024

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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